

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TAMMY J. DETRAY and GREGORY S. DETRAY,

Plaintiffs,

V.

AIG INSURANCE COMPANY OF
CANADA f/k/a CHARTIS INSURANCE
COMPANY OF CANADA d/b/a CHARTIS
INSURANCE; NORTHBIDGE
COMMERCIAL INSURANCE
CORPORATION; and MULLEN
TRUCKING 2005 LTD.

Defendants.

No. 2:17-cv-0983 RAJ

ORDER

This matter comes before the Court on Defendant's Motion for Summary Judgment (Dkt. # 34) and Plaintiffs' Motion for Partial Summary Judgment (Dkt. # 27). Both Motions are opposed. Dkt. ## 36, 38, 51. For the reasons stated below, Defendant's Motion for Summary Judgment (Dkt. # 34) is **DENIED**, and Plaintiffs' Motion for Partial Summary Judgment (Dkt. # 27) is **DENIED**.

1. BACKGROUND

Plaintiffs Tammy and Gregory DeTray are residents of Thurston County, Washington. Dkt. # 1-2 ¶ 2.1. Plaintiffs owned and operated a pilot car service known as “G&T Crawler Service.” Dkt. # 29 Ex. A. Defendant Northbridge General

1 Insurance Corporation (“Northbridge”) is a Canadian insurance company. Its principal
2 place of business is in Toronto, Ontario. *Id.* ¶ 2.3.

3 In 2013, a commercial truck collided with the Skagit River Bridge in Mount
4 Vernon, Washington, and caused it to collapse. Dkt. # 1-2 ¶ 5.1. The truck was guided
5 at the time by a pilot vehicle operated by Plaintiff Tammy DeTray. Dkt. # 15 Ex. A.
6 The truck was owned and operated by Mullen Trucking 2005 Ltd. (“Mullen”), a
7 Canadian company based in Calgary, Alberta. Mullen was insured by Northbridge
8 under a primary insurance policy, Policy No. 2002135 (the “Northbridge Policy”). Dkt.
9 # 28 Ex. C. AIG Insurance Company of Canada (“AIG”) also issued a commercial
10 umbrella policy to Mullen (the “AIG Policy”). The AIG Policy provides coverage after
11 the limits of the Northbridge Policy have been exhausted. Dkt. # 37 Ex. 1.

12 The State of Washington, Qwest Corporation, and three other individuals brought
13 lawsuits against Mullen, Mrs. DeTray, and others in Skagit County Superior Court,
14 alleging that Mrs. DeTray negligently caused the bridge to collapse (the “Underlying
15 Lawsuits”). Dkt. # 45. Mullen then filed cross-claims against Plaintiffs in these
16 lawsuits. Dkt. # 1-2 ¶ 5.2. The Underlying Lawsuits are still pending. Dkt. # 45. Mrs.
17 DeTray tendered her defense of the lawsuits to Northbridge, requesting defense and
18 indemnity under the Northbridge Policy. *Id.* ¶ 6.1. Northbridge assigned Mrs.
19 DeTray’s claim to Senior Claims Technical Specialist Ryan Cobb. Dkt. # 28 Ex. C.
20 Northbridge agreed to defend Mullen but declined Plaintiffs’ tender. Dkt. # 28 Ex. E.
21 The letter declining Plaintiffs’ tender stated that Mrs. DeTray was not insured under the
22 Northbridge Policy and that she did not qualify as an “additional insured under the
23 CGL, SPF No. 1, or SPF No. 6.” The letter also stated that “[b]y Court order, Ms.
24 DeTray was found to be [Mullen’s] agent during the transportation of [Mullen’s]
25 oversized load. This does not qualify her for coverage under the Policy. The Policy
26 does not include ‘agents’ as additional or unnamed insureds.” Dkt. # 28 Ex. C. Under
27 the Northbridge Policy, Northbridge provides several different coverages. Three parts

1 of the Northbridge policy provide liability insurance: the Standard Automobile Policy
2 (“SPF No. 1”), the Commercial General Liability form (“CGL”), and the Non-Owned
3 Automobiles form (“SPF No. 6”). *Id.*

4 The SPF No. 1 states:

5 The Insurer agrees to indemnify the Insured and, in the same manner
6 and to the same extent as if named herein as the Insured, every other
7 person who with his consent personally drives the automobile, or
8 personally operates any part thereof, against the liability imposed by
9 law upon the insured or upon any such other persons for loss or
damage arising from the ownership, use or operation of the
automobile and resulting from . . . [damage to property]

10 SPF No. 1 defines “the automobile” as: “The Described Automobile - an
11 automobile, trailer or semi-trailer specifically described in the Policy or within the
12 description of the insured automobiles set forth therein.” Dkt. # 28 Ex. C.

13 The CGL coverage states that it covers “sums that the Insured becomes legally
14 obligated to pay as ‘compensatory damages’ because of ‘bodily injury’ or ‘property
15 damage’ to which this insurance applies.” *Id.* “Property Damage” arising directly or
16 indirectly out of the ownership, maintenance, use or entrustment to others of any
17 automobile owned or operated by or on behalf of or rented or loaned to any Insured is
18 excluded from coverage. *Id.* The term “automobile” is defined as “a land motor
19 vehicle, trailer or semitrailer that is required by law to be insured under a contract
20 evidenced by a motor vehicle liability policy, or any vehicle insured under such a
21 contract.” *Id.* The CGL form also states who may qualify as an Insured under the
22 coverage. Included in the definition of an Insured are “‘volunteer workers’ only while
23 performing duties related to the conduct of your business, or your ‘employees’ . . . but
24 only for acts within the scope of their employment by you or while performing duties
25 related to the conduct of your business.” *Id.* An “employee” includes a “leased
26 worker” or a “temporary worker.” *Id.*

1 The SPF No. 6 states that the Insurer agrees to indemnify the Insured against
2 liability imposed by law upon the Insured for loss or damage arising from the use or
3 operation of any automobile not owned in whole or in part by or licensed in the name of
4 the Insured, and resulting from bodily injury to or the death of any person or damage to
5 property of others not in the care, custody, or control of the insured. *Id.* The SPF No. 6
6 also includes additional insureds. Additional Insureds are defined as:

7 [E]very partner, officer or employee of the Insured who, with the consent of
8 the owner thereof, personally drives (a) in the business of the Insured stated
9 in Item 3 of the application, any automobile not owned in whole or in part
10 by or licensed in the name of (i) the Insured, (ii) such additional Insured
11 person, or (iii) any person or persons residing in the same dwelling
12 premises as the Insured or such additional insured person or (b) any
13 automobile hired or leased in the name of the Insured except an automobile
14 owned in whole or in part or licensed in the name of such additional insured
15 person.

16 *Id.*

17 On April 11, 2017, Northbridge filed a separate lawsuit against Mrs. DeTray in
18 Calgary, Alberta (the “Alberta Lawsuit”). Dkt. # 28 Ex. F. The Originating
19 Application (analogous to a complaint) in the Alberta Lawsuit asked the Alberta Court
20 to issue an order declaring that Northbridge had no obligation to defend or indemnify
21 Mrs. DeTray in the Underlying Lawsuits. Dkt. # 28 Ex. F. Northbridge represents that
22 Mrs. DeTray was properly served and that a copy of the Originating Application was
23 sent to Plaintiffs’ attorney in the Underlying Lawsuits. Dkt. # 35. A hearing was held
24 in the Alberta Lawsuit on September 21, 2017. Dkt. # 35 Ex. J. Northbridge also
25 represents that Plaintiffs had notice of the hearing but did not appear. Dkt. # 35 Exs. C-
26 I. The Alberta Court entered judgment on September 29, 2017, finding: (1) the Alberta
27 Court had jurisdiction over the matter and Mrs. DeTray had proper notice of the Alberta
Lawsuit in accordance with the law of Alberta and the rules and practices of the Alberta
Court; (2) The vehicle operated by Mrs. DeTray was not insured under the relevant
insurance policies; (3) Mrs. DeTray was not insured under the relevant policies; and (4)

1 even if Mrs. DeTray was insured under the relevant policies, any duty to defend would
2 be excluded or does not apply. Dkt. # 35 Exs. J, K.

3 Plaintiffs filed this action in Skagit County Superior Court against AIG,
4 Northbridge, Washington State Department of Transportation, and Mullen on May 11,
5 2017, shortly after Northbridge filed the Alberta Lawsuit. Dkt. # 1. Defendants then
6 removed the lawsuit to this Court. *Id.* Plaintiffs filed stipulations of dismissal for the
7 Washington State Department of Transportation, Mullen, and AIG. Dkt. ## 26, 64, 75.
8 Plaintiffs seek a declaratory judgment from this Court that Northbridge is obligated to
9 pay in full on behalf of Plaintiffs, that Northbridge handled Plaintiff's insurance claim
10 in bad faith and in violation of the Washington Consumer Protection Act, that
11 Northbridge's policies provided coverage by estoppel, damages, as well as attorney's
12 fees and costs. Dkt. # 1-2. Northbridge filed a Motion for Summary Judgment of
13 Plaintiffs' Complaint of lack of personal jurisdiction, or in the alternative, because
14 Plaintiffs' claims against Northbridge are barred by *res judicata*. Dkt. # 34. Plaintiffs
15 also filed a Motion for Partial Summary Judgment, seeking a declaratory judgment that
16 Northbridge had and has a duty to defend Mrs. DeTray in the Underlying Lawsuits.
17 Dkt. # 27.

18 **II. LEGAL STANDARD**

19 Summary judgment is appropriate if there is no genuine dispute as to any
20 material fact and the moving party is entitled to judgment as a matter of law. Fed. R.
21 Civ. P. 56(a). The moving party bears the initial burden of demonstrating the absence
22 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
23 Where the moving party will have the burden of proof at trial, it must affirmatively
24 demonstrate that no reasonable trier of fact could find other than for the moving party.
25 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). On an issue
26 where the nonmoving party will bear the burden of proof at trial, the moving party can
27 prevail merely by pointing out to the district court that there is an absence of evidence to

1 support the non-moving party's case. *Celotex Corp.*, 477 U.S. at 325. If the moving
2 party meets the initial burden, the opposing party must set forth specific facts showing
3 that there is a genuine issue of fact for trial in order to defeat the motion. *Anderson v.*
4 *Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The court must view the evidence in the
5 light most favorable to the nonmoving party and draw all reasonable inferences in that
6 party's favor. *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150-51 (2000).

7 However, the court need not, and will not, "scour the record in search of a
8 genuine issue of triable fact." *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996); *see*
9 *also, White v. McDonnel-Douglas Corp.*, 904 F.2d 456, 458 (8th Cir. 1990) (the court
10 need not "speculate on which portion of the record the nonmoving party relies, nor is it
11 obliged to wade through and search the entire record for some specific facts that might
12 support the nonmoving party's claim"). The opposing party must present significant
13 and probative evidence to support its claim or defense. *Intel Corp. v. Hartford Accident*
14 & *Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991). Uncorroborated allegations and
15 "self-serving testimony" will not create a genuine issue of material fact. *Villiarimo v.*
16 *Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002); *T.W. Elec. Serv. V. Pac*
17 *Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987).

18 **III. DISCUSSION**

19 **A. Personal Jurisdiction**

20 Plaintiff has the burden of establishing personal jurisdiction. *Ziegler v. Indian*
21 *River County*, 64 F.3d 470, 473 (9th Cir. 1995). "It is well established that where the
22 district court relies solely on affidavits and discovery materials, the plaintiff need only
23 establish a *prima facie* case of jurisdiction." *Rano v. Sipa Press, Inc.*, 987 F.2d 580,
24 587 n.3 (9th Cir. 1993). "Federal courts apply state law to determine the bounds of their
25 jurisdiction over a party." *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir.
26 2017) (citing Fed. R. Civ. P. 4(k)(1)(A)). Washington's long-arm statute, RCW
27 4.28.185, "extends jurisdiction to the limit of federal due process." *Shute v. Carnival*

1 *Cruise Lines*, 113 Wn. 2d 763, 771, 783 P.2d 78 (1989). The due process clause grants
2 the court jurisdiction over defendants who have “certain minimum contacts . . . such
3 that maintenance of the suit does not offend ‘traditional notions of fair play and
4 substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

5 Personal jurisdiction can be found on either of two theories: general jurisdiction
6 and specific jurisdiction. *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d
7 1082, 1086 (9th Cir. 2000). A defendant with “substantial” or “continuous and
8 systematic” contacts with the forum state is subject to general jurisdiction. *Id.* “The
9 inquiry whether a forum State may assert specific jurisdiction over a nonresident
10 defendant focuses on the relationship among the defendant, the forum, and the
11 litigation.” *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir.
12 2017) (internal quotations omitted). As Plaintiffs do not assert that Northbridge is
13 subject to general jurisdiction, the Court will consider whether Northbridge is subject to
14 specific jurisdiction.

15 The court applies a three-part test to determine whether the exercise of specific
16 jurisdiction over a non-resident defendant is appropriate: (1) the defendant has either
17 purposefully directed his activities toward the forum or purposely availed himself of the
18 privileges of conducting activities in the forum, (2) the plaintiff’s claims arise out of the
19 defendant’s forum-related activities, and (3) exercise of jurisdiction is reasonable.

20 *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017).

21 Plaintiff bears the burden of satisfying the first two prongs. *Schwarzenegger v. Fred*
22 *Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). The burden then shifts to
23 defendant to make a “compelling case” that the exercise of jurisdiction would not be
24 reasonable. *Id.*

25 a. *Purposeful Availment*

26 To have purposely availed itself of the privilege of doing business in the forum, a
27 defendant must have performed some type of affirmative conduct which allows or

1 promotes the transaction of business within the forum state. *Sher v. Johnson*, 911 F.2d
2 1357, 1362 (9th Cir. 1990). Purposeful availment of a forum can occur when an
3 insurer agrees to provide coverage to its insureds within the disputed forum and an
4 insured event results in litigation within that forum. *Farmers Ins. Exch. v. Portage La
5 Prairie Mut. Ins. Co.*, 907 F.2d 911, 913-14 (9th Cir. 1990). It is undisputed that the
6 insured event occurred in Washington State and resulted in litigation in Washington
7 State. It is also undisputed that Northbridge agreed to provide coverage to their
8 insureds within the United States and is currently providing defense to Mullen,
9 Plaintiffs' co-defendant in the Underlying Lawsuits. Dkt. # 52 Ex. G. The Court finds
10 that Northbridge purposely availed itself of the privileges and benefits of conducting
11 their business in Washington State by contracting to indemnify and defend claims
12 arising in that forum.

b. Arising Out Of

14 The Ninth Circuit has adopted a “but for” analysis to determine whether the
15 claims at issue arose from a defendant’s forum-related conduct. *Menken v. Emm*, 503
16 F.3d 1050, 1058 (9th Cir. 2007). “[T]he plaintiff’s claim must be one which arises out
17 of or relates to the defendant’s forum-related activities.” *Id.* Plaintiffs bring this suit
18 against Northbridge because of Northbridge’s alleged breach of promise to Plaintiffs to
19 indemnify and defend them in the Underlying Lawsuits. Setting aside any disputes as to
20 whether Plaintiffs are considered insureds under the Northbridge Policy, Plaintiffs
21 would not have suffered the alleged injury “but for” Northbridge’s refusal to defend
22 them.

c. Exercise of Jurisdiction is Reasonable

24 As Plaintiffs have satisfied the first two prongs required to establish specific
25 jurisdiction, the burden shifts to Northbridge to make a “compelling case” that exercise
26 of jurisdiction is not reasonable. *Schwarzenegger*, 374 F.3d at 802. There are seven
27 factors a court must consider when determining whether exercise of jurisdiction is

1 reasonable: “(1) the extent of the defendants' purposeful interjection into the forum
2 state's affairs; (2) the burden on the defendant of defending in the forum; (3) the extent
3 of conflict with the sovereignty of the defendants' state; (4) the forum state's interest in
4 adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6)
5 the importance of the forum to the plaintiff's interest in convenient and effective relief;
6 and (7) the existence of an alternative forum.” *CE Distribution, LLC v. New Sensor*
7 *Corp.*, 380 F.3d 1107, 1112 (9th Cir. 2004).

8 Northbridge cites to a series of Tenth Circuit cases in support of their argument
9 that the type of “minimum contacts” in this case are so minimal that due process
10 requires a “more rigorous analysis” of the reasonableness requirement for personal
11 jurisdiction. Northbridge provides no argument or legal authority indicating that this is
12 the law in the Ninth Circuit.

13 Northbridge offers very little argument in support of their contention that
14 litigation in the disputed forum is not reasonable, choosing to rely on its citations to
15 Tenth Circuit case law. Northbridge's argument appears to echo an argument made in
16 *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1095 (10th Cir. 1998),
17 more specifically, the argument that the burden of litigating in Washington would be too
18 great for a Canadian corporation. Northbridge represents that this factor weighs
19 strongly in their favor because they have no offices in Washington, have no license to
20 conduct business in Washington, employ no agents in Washington, and insure no
21 Washington residents. Northbridge also implies that litigating this case would not be
22 reasonable because it would require travel and would force them to litigate in a foreign
23 forum unfamiliar with the Canadian law governing the dispute. First, the parties present
24 no arguments regarding what law governs this dispute and the Court will not make that
25 determination at this time. Second, while litigating this case would require travel,
26 Northbridge has been in litigation related to this matter and the underlying event in
27 Washington State for over a year. As noted above, Northbridge accepted Mullen's

1 tender of defense, and this case has also been ongoing since May of 2017. Efforts
2 related to all of these matters could be coordinated in order to lessen the burden.

3 Northbridge also argues that Canada has a greater interest in litigating this
4 dispute, as the Northbridge Policy was drafted, negotiated, and executed in Alberta
5 between two Canadian companies. Northbridge represents that the Northbridge Policy
6 includes policy forms that are promulgated by the Alberta government. The Court
7 agrees that Alberta has a greater interest in how the Northbridge policy is interpreted
8 and applied. This factor weights in favor of Northbridge.

9 Northbridge presents no other argument regarding the remaining five factors to
10 be considered when determining whether exercise of jurisdiction is reasonable.
11 However, the Court notes that three of the remaining factors weigh in Plaintiffs' favor:
12 the most efficient judicial resolution of the controversy, the importance of the forum to
13 Plaintiffs' interest in convenient and effective relief, and the existence of an alternative
14 forum. Following Northbridge's logic, Plaintiffs would need to bring this case against
15 Northbridge in Alberta, Canada in order to preserve their rights. As the Alberta Court
16 has already issued a decision on this matter, it is unclear whether Plaintiffs would be
17 able to do so. Further, requiring Plaintiffs to begin again in a different forum, over one
18 year into these proceedings, would not result in the most efficient resolution of this
19 matter. Finally, Plaintiffs are residents of Washington State. They are currently
20 litigating this matter and all related matters in Washington State; matters that
21 Northbridge is actively involved in. All of the events giving rise to this lawsuit took
22 place in Washington State. Therefore, the forum of this lawsuit is important to
23 Plaintiffs' interest in convenient and effective relief. *See McGee v. Int'l Life Ins. Co.*,
24 355 U.S. 220, 223, 78 S. Ct. 199, 201, 2 L. Ed. 2d 223 (1957) (finding that residents of
25 the requested forum state "would be at a severe disadvantage if they were forced to
26 follow the insurance company to a distant State in order to hold it legally
27 accountable."). After weighing all of the factors above, the Court finds that Northbridge

1 fails to make a “compelling case” that exercise of jurisdiction is not reasonable.
2 Therefore, this Court’s exercise of specific jurisdiction over Northbridge is appropriate.

3 B. Res Judicata

4 “‘*Res judicata* . . . bars litigation in a subsequent action of any claims [or issues]
5 that were raised or could have been raised in the prior action.’” *Owens v. Kaiser Found.*
6 *Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) (quoting *W. Radio Servs. Co. v.*
7 *Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997)); *see Clements v. Airport Auth.*, 69 F.3d
8 321, 329–30 (9th Cir. 1995). *Res judicata* applies where there is: 1) an identity of
9 claims, 2) a final judgment on the merits, and 3) identity or privity between parties.
10 *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002); *W. Radio Servs. Co. v.*
11 *Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997).

12 Northbridge first asks the Court to recognize and enforce the judgment of the
13 Alberta Court. This Court has the power to recognize and enforce foreign judgments.
14 *See Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199,
15 1213 (9th Cir. 2006). However, Northbridge is not the plaintiff in this matter.
16 Northbridge did not bring this claim seeking enforcement of the Alberta Court’s
17 judgment against Plaintiffs, nor do they seek enforcement of that judgment in their
18 request for relief. Dkt. # 41. Northbridge asks that this Court decide whether Plaintiffs
19 claims are barred by the litigation and judgment in Alberta. Should the Court decide
20 that *res judicata* applies to bar Plaintiffs’ claims, that decision would not act as
21 declaratory judgment in Northbridge’s favor or an enforcement of the Alberta Court’s
22 judgment.

23 The Court must now consider whether state or federal law should be applied
24 when a party in a federal diversity case invokes the defense that *res judicata* bars a
25 claim as a result of a foreign country’s prior judgment. In the absence of a federal
26 statute or treaty, a federal court sitting in diversity generally applies the law of
27 recognition of the state in which it sits. *Erie R. R. Co. v. Tompkins*, 304 U.S. 64, 58

1 S.Ct. 817, 82 L.Ed. 1188 (1938); *see also Yahoo! Inc.*, 433 F.3d at 1213. While
2 Washington has adopted the Uniform Foreign Money Judgments Recognition Act, those
3 statutes do not apply where the judgment does not grant or deny recovery of a sum of
4 money. RCWA § 6.40A.020. In the absence of an applicable Washington State statute,
5 the principles of comity apply. “The doctrine of comity directs that we give full effect
6 to foreign judgments, except in extraordinary cases.” *Rains v. State, Dep’t of Soc. &*
7 *Health Servs., Div. of Child Support*, 98 Wash. App. 127, 134, 989 P.2d 558, 562
8 (1999). A foreign judgment is valid if:

9 there has been opportunity for a full and fair trial abroad before a court of
10 competent jurisdiction, conducting the trial upon regular proceedings, after
11 due citation or voluntary appearance of the defendant, and under a system
12 of jurisprudence likely to secure an impartial administration of justice
13 between the citizens of its own country and those of other countries, and
14 there is nothing to show either prejudice in the court, or in the system of
15 laws under which it is sitting, or fraud in procuring the judgment.

16 *In re Estate of Toland*, 180 Wash. 2d 836, 847, 329 P.3d 878, 883 (2014) (quoting
17 *Hilton v. Guyot*, 159 U.S. 113, 202, 16 S.Ct. 139, 158, 40 L.Ed. 95 (1895)). “A
18 judgment is valid if the court had jurisdiction, there was notice, and the court was
19 competent.” *Id.*

20 The parties do not dispute that Plaintiffs had notice of the Alberta Lawsuit, or
21 that Mrs. DeTray had notice of the related hearings. Further, Canadian courts have been
22 recognized in the United States as “competent”. *See Pickering v. Gonzales*, 465 F.3d
23 263, 269 (6th Cir. 2006); *see also Royal Bank of Canada v. Trentham Corp.*, 665 F.2d
24 515, 515 (5th Cir. 1981). Plaintiffs contend that the decision of the Alberta Court
25 should be not recognized because it did not have personal jurisdiction over Mrs.
26 DeTray, and the judgment entered as a result of Mrs. DeTray’s default is void. In
27 analyzing whether a court of a foreign country has acquired jurisdiction over a
nonresident defendant, the Ninth Circuit has applied the American principles of
jurisdictional due process. A constitutionally valid judgment is entitled to full faith and

1 credit as long as there is “a sufficient connection between the defendant and the forum
2 state as to make it fair to require defense of the action in the forum, and provided that
3 the defendant has received reasonable notice of the proceedings against him.” *Bank of*
4 *Montreal v. Kough*, 612 F.2d 467, 470 (9th Cir. 1980) (citing to *Kulko v. Superior Court*
5 *of California*, 436 U.S. 84, 91-92, 98 S.Ct. 1690, 1696-97, 56 L.Ed. 132 (1978))
6 (internal quotations omitted). Plaintiffs argue that Mrs. DeTray lacked sufficient
7 minimum contacts with the forum state because she has not been to Canada since the
8 1970’s, she is a resident of Washington State, and she was dispatched to operate the
9 pilot vehicle at issue in this case by a United States company. Northbridge argues that
10 by submitting an insurance claim to Northbridge in Toronto, Ontario, Mrs. DeTray was
11 seeking benefits under a contract entered into by two Canadian companies under the law
12 of Alberta, and that this constitutes minimum contacts sufficient to support personal
13 jurisdiction. Dkt. # 54.

14 Northbridge represents that it is not licensed to practice in Washington, has no
15 office in Washington, has no agents in Washington, but provides coverage in North
16 America. The argument that Mrs. DeTray placed herself under the jurisdiction of the
17 Alberta Court by submitting a claim to Northbridge in the only way open to her is not
18 persuasive. Following Northbridge’s logic, the submission of a claim to a Canadian
19 insurance company regardless of where the events giving rise to the claim occurred is a
20 sufficient minimum contact to satisfy due process even where the claimant has no other
21 contacts with that forum. While it is clear that Northbridge has a substantial connection
22 with Canada, jurisdictional due process focuses on the relationship between the
23 defendant and the forum, not the plaintiff. Mrs. DeTray had little to no connection to
24 Alberta, Canada. The Court finds that the Alberta Court could not, within the
25 restrictions of due process, exercise jurisdiction over Mrs. DeTray. Pursuant to the
26 principles of comity, the decision in the Alberta Lawsuit would not be valid and
27 recognized under Washington law. Therefore, it cannot serve as the basis to bar

1 Plaintiffs' claim by *res judicata*. Northbridge's Motion for Summary Judgment is
2 **DENIED**. Dkt. # 34.

3 C. Northbridge's Duty to Defend Plaintiffs

4 Plaintiffs move for summary judgment of their claim for a declaratory judgment
5 from the Court that Northbridge has a duty to defend Mrs. DeTray in the Underlying
6 Lawsuits. Both parties agree that Washington law applies to this inquiry. Dkt. # 27 at
7 7; Dkt. # 38 at 10. Pursuant to Washington law, the duty to defend arises at the time an
8 action is first brought, and is based on the potential for liability. *Woo v. Fireman's*
9 *Fund Ins. Co.*, 161 Wash. 2d 43, 52, 164 P.3d 454, 459 (2007). "An insurer has a duty
10 to defend when a complaint against the insured, construed liberally, alleges facts which
11 could, if proven, impose liability upon the insured within the policy's coverage." *Id.* at
12 52-53 (internal citations omitted).

13 "[T]he duty to defend is triggered if the insurance policy *conceivably covers* the
14 allegations in the complaint." *Id.* at 53; *see also Goodstein v. Cont'l Cas. Co.*, 509 F.3d
15 1042, 1055 (9th Cir. 2007). An insurer is not relieved of its duty to defend unless the
16 claim alleged in the complaint is "clearly not covered by the policy." *Woo*, 161 Wash.
17 2d at 53. There are two exceptions to the rule that the duty to defend must be
18 determined only from the complaint: 1) "if it is not clear from the face of the complaint
19 that the policy provides coverage, but coverage could exist, the insurer must investigate
20 and give the insured the benefit of the doubt that the insurer has a duty to defend"; and
21 2) "if the allegations in the complaint conflict with facts known to or readily
22 ascertainable by the insurer or if the allegations are ambiguous or inadequate, facts
23 outside the complaint may be considered." *Id.* at 53-54. The insurer may not rely on
24 facts extrinsic to the complaint to deny the duty to defend—it may do so only to trigger
25 the duty. *Id.* at 54.

26 As noted above, three parts of the Northbridge policy provide liability insurance:
27 the Standard Automobile Policy ("SPF No. 1"), the Commercial General Liability form

1 (“CGL”), and the Non-Owned Automobiles form (“SPF No. 6”). Dkt. # 28 Ex. C. The
2 CGL does not cover property damage arising directly or indirectly out of use of an
3 automobile. Plaintiffs do not dispute that Mrs. DeTray and the driver of the commercial
4 truck that collided with the Skagit River Bridge were operating “automobiles” as
5 defined by the CGL form. To the extent that the Underlying Lawsuits allege property
6 damage arising out of Mrs. DeTray’s use of an automobile, that damage is not covered
7 under the CGL form and the duty to defend is not triggered. Only one of the complaints
8 from the Underlying Lawsuits seeks damages for injuries that are not property damage,
9 however, that complaint does not allege facts that would establish that Mrs. DeTray is
10 covered by the CGL. The plaintiffs in that particular Underlying Lawsuit only allege
11 that Mrs. DeTray, through her business, G&T Crawler Service, was hired by Mullen to
12 drive a pilot car. The complaint does not allege that Mrs. DeTray is an employee of
13 Mullen, and therefore insured under the CGL form for any damages that are not
14 property damage. Dkt. # 29 Ex. C.

15 Mullen is the named Insured for the SPF No. 1. Dkt. # 28 Ex. C. On the
16 Declarations page of the SPF No. 1, under “Particulars of the Described Automobile,”
17 the trade name for the Described Automobile is listed as “ALL VEHICLES OWNED,
18 REGISTERED, LEASED AND/OR OPERATED ON BEHALF OF THE NAMED
19 INSURED.” Dkt. # 28-4 at 25. The SPF No. 1 defines “the automobile” as: “The
20 Described Automobile - an automobile, trailer or semi-trailer specifically described in
21 the Policy or within the description of the insured automobiles set forth therein.”
22 Plaintiffs argue that the definition of “the automobile” incorporates the listed trade name
23 for the Described Automobile on the Declarations page because it is “within the
24 description of the insured automobiles set forth therein.” Referencing Endorsement #
25 A-019, Northbridge argues that the definition of Described Automobile incorporates the
26 Endorsement’s description of what automobiles are covered by the Auto Section of the
27 Northbridge Policy.

1 Endorsement # A-019 is a Blanket Basis Fleet Endorsement and states that “[t]he
2 policy shall provide Insurance with respect to all automobiles . . . which are: (i) owned
3 by or licensed in the name of the Insured; (ii) leased [from certain lessors] for a period
4 in excess of 30 days [; or] (iii) leased for a period in excess of 30 days under a written
5 lease agreement from a lessor other than those listed[.]” This is quite literally a
6 “description of the insured automobiles set forth therein.” Plaintiffs do not dispute that
7 the Auto Section identifies the applicable modifications and endorsements, one of which
8 is Endorsement # A-019. Dkt. # 68 at 4. The trade name for a defined term, Described
9 Automobile, is not a description of the vehicles insured under the SPF No. 1. It is
10 exactly what it purports to be, a general trade name for the vehicles that fit under the
11 definition of the Described Automobile. There is no indication that this trade name
12 should act as the official definition of the Described Automobile, such that it would
13 overrule the specific contradicting definition listed in the Auto Policy. Plaintiffs do not
14 point to any language in the Northbridge Policy that indicates that trade names should
15 be incorporated into definitions within the policy. All of the complaints in the
16 Underlying Lawsuits allege that Mrs. DeTray was driving a vehicle owned by and
17 licensed to her and Mr. DeTray. They do not allege that Mullen owned or licensed the
18 vehicle, or that Mullen leased it.

19 The Declarations page of the SPF No. 6 names Mullen as the Insured for that
20 policy. Dkt. # 28 Ex. C. Northbridge argues that the operation of Mrs. DeTray’s
21 vehicle does not qualify for coverage under the SPF No. 6 form because it does not
22 meet the requirements of the Additional Insureds clause. The Additional Insureds
23 clause states that the Insurer “agrees to indemnify in the same manner and to the same
24 extent as if named herein as the Insured,” employees of the Insured who drive “any
25 automobile not owned in whole or in part by or licensed in the name of the Insured . . .
26 or such additional insured person” or “any automobile hired or leased in the name of the
27 Insured except an automobile owned in whole or in part or licensed in the name of such

1 additional insured person.” Dkt. # 28 Ex. C. Only one of the complaints in the
2 underlying action alleges that Mrs. DeTray was an “employee and/or agent” of Mullen.
3 Dkt. # 29 Ex. A. At least one other complaint alleges that Mrs. DeTray was an agent of
4 Mullen and was hired by Mullen, but makes no allegation that Mrs. DeTray was an
5 employee of Mullen. Setting aside any later finding that Mrs. DeTray was an agent, at
6 least one of the complaints sufficiently alleges that Mrs. DeTray was an employee of
7 Mullen. However, even as an alleged employee of the Insured, Mrs. Detray would not
8 qualify as an Additional Insured under the SPF No. 6 form. While Mrs. DeTray was
9 driving a vehicle in the business of the Insured, the vehicle was owned in whole or in
10 part by or licensed in the name of the “additional insured person,” or Mrs. DeTray.
11 Therefore, Mrs. DeTray does not meet the requirements for coverage as an Additional
12 Insured under part (a) of the clause. Mrs. DeTray also does not meet the requirements
13 of part (b) of the clause. Her vehicle was arguably hired in the name of Mullen, but
14 again, it was owned in whole or in part or licensed in her name. Even construing the
15 allegations of the complaints from the Underlying Lawsuits liberally, there is no
16 genuine issue of material fact as to Mrs. DeTray’s potential coverage. The complaints
17 do not establish that Mrs. DeTray could “conceivably” be covered by the Northbridge
18 Policy. Therefore, Plaintiffs’ Motion for Summary Judgment is **DENIED**. Dkt. # 27.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Defendant's Motion for Summary Judgment (Dkt. #
3 34) is **DENIED**, and Plaintiffs' Motion for Partial Summary Judgment (Dkt. # 27) is
4 **DENIED**.

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6 DATED this 31st day of August, 2018.

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11 The Honorable Richard A. Jones
12 United States District Judge
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